

Amendments to the Drawings:

A replacement sheet for Figure 4 is being provided herewith to include reference number 400.

Attachment: 1 Replacement Sheet
 1 Annotated Sheet Showing Changes

REMARKS/ARGUMENTS

Amendments were made to the specification to correct errors and to clarify the specification. No new matter has been added by any of the amendments to the specification.

Claims 1-10, 12-21, 23-32, 34 and 35 are pending in the present application. Claims 1, 5, 7, 8, 12, 16, 18, 19, 23, 27, 29, 30, 31 and 34 have been amended, and Claims 11, 22 and 33 have been cancelled, herewith. Reconsideration of the claims is respectfully requested.

I. Objection to Drawing

The Examiner objected to the drawing, saying that reference number 400 is missing from Figure 4. Applicants are amending the figures herewith by including a replacement sheet for Figure 4 which includes reference number 400. Therefore, the objection to the drawing has been overcome.

II. Objection to Specification

The Examiner notes Applicants' use of the trademark Java, and requests that Applicants respect the proprietary nature of such trademark. In response thereto, Applicants have amended page 1 of the Specification in an attempt to comply with the Examiner's concerns.

III. 35 U.S.C. § 101

The Examiner rejected Claims 1-4, 7-8, 12-15, 18-19 and 23-34 under 35 U.S.C. § 101 as being directed towards non-statutory subject matter. This rejection is respectfully traversed.

With respect to Claims 1-4 and 7-8 (which are process claims), the Examiner states that such claims do not produce a practical application established by a useful, concrete, tangible result and, thus, are non-statutory. Applicants urge that the tangible result is both (i) *an identified set of sequential segments* (which result from parsing the path), and (ii) *an ascertained package name* (which results from using the set of instructions that were identified by parsing the path). A path is identified, and this path is parsed to identify a set of sequential segments, which is used to ascertain a package name for the class. The parsing of the path therefore does in fact create a concrete, tangible result¹ as this result (identified set

¹ The term "tangible" refers to anything that is capable of being perceived, precisely defined or realized by the mind, or capable of being appraised at an actual or approximate value (see Merriam-Webster Online Dictionary Definition, a copy of which is included immediately below). In other words, something is "tangible" if it is possible to verify its existence. This does not require that the element be "touchable" but merely "perceivable". The present claims meet this requirement, and thus are directed to statutory subject matter.

of sequential segments) is then used to ascertain a package name for the class. Applicants have amended Claim 1 to further recite subsequent use of these concrete, tangible results to further reinforce their tangible characteristics.

With respect to Claims 12-15 and 18-19 (which are *machine/product claims* – e.g. a data processing system), the Examiner states that such claims do not produce a practical application established by a useful, concrete, tangible result and, thus, are non-statutory. Applicants urge that the tangible result is an *ascertained package name*. Still further, Applicants urge that such claims recite a data processing system. Per MPEP 2106(IV)(B)(2)(a) – which is specifically directed to *product claims* - a claim limited to a machine or manufacture, which has a practical application in the technological art, is statutory. See, also, *In re Alappat*, 31 USPQ2d 1545 (Fed. Cir. 1994), *State Street Bank & Trust Co. v. Signature Financial Group Inc.*, 47 USPQ2d 1596 (Fed Cir. 1998), and *AT&T Corp. v. Excel Communications, Inc.*, 50 USPQ2d 1447 (Fed. Cir. 1999). Because Claims 12-15 and 18-19 are limited to a machine (a data processing system) and has a practical application in the technological arts (it ascertains a class package name from a path), it is therefore statutory under 35 U.S.C. § 101 per MPEP 2106(IV)(B)(2)(a) – which is specifically directed to *product claims*.

With respect to Claims 23-26, 30 (which are computer program product claims) and 34 (which is a *machine claim* – e.g. a data processing system), the Examiner states that such claims do not produce a practical application established by a useful, concrete, tangible result and, thus, are non-statutory. With respect to Claims 23-26 and 30, Applicants urge that the tangible result is an *ascertained package name*. Applicants have also amended Claim 23 in similar fashion to Claim 1, and Applicants further traverse the rejection of Claims 23-26 for similar reasons to those given above with respect to Claim 1. With respect to Claim 34, however, Applicants urge that such claim recites a *data processing system*. Per MPEP 2106(IV)(B)(2)(a), a claim limited to a machine or manufacture, which has a practical application in the technological art, is statutory. See, also, *In re Alappat, supra*, *State Street Bank & Trust Co. v. Signature*

Main Entry: **'tan·gi·ble**

Pronunciation: 'tan-j&-b&l

Function: *adjective*

Etymology: Late Latin *tangibilis*, from Latin *tangere* to touch

1 a : capable of being perceived especially by the sense of touch : **PALPABLE** **b** : substantially real : **MATERIAL**

2 : capable of being precisely identified or realized by the mind <her grief was *tangible*>

3 : capable of being appraised at an actual or approximate value <*tangible* assets>

synonym see PERCEPTIBLE

- **tan·gi·bil·i·ty** /'tan-j&-'bi-l&-tE/ *noun*

- **tan·gi·ble·ness** /'tan-j&-b&l-n&s/ *noun*

- **tan·gi·bly** /-blE/ *adverb*

Financial Group Inc., supra, and *AT&T Corp. v. Excel Communications, Inc., supra*. Because Claim 34 is limited to a machine (a data processing system, having, for example, a bus system, a memory and a processing unit) and has a practical application in the technological arts (it ascertains a class package name from a path), it is therefore statutory under 35 U.S.C. § 101 per MPEP 2106(IV)(B)(2)(a) – which is specifically directed to *product claims*.

With respect to Claims 23-33 (which are computer program product claims), the Examiner states that such claims are directed to non-statutory subject matter as computer readable medium includes non-statutory forms per the description provided in the Specification. Applicants have amended such claims to expressly recite an allowable claim form per the MPEP and case law². Therefore, this amendment to Claims 23 and 31 has overcome the present 35 USC 101 rejection of Claims 23-33.

Therefore, the rejection of Claims 1-4, 7-8, 12-15, 18-19 and 23-34 under 35 U.S.C. § 101 has been overcome.

IV. 35 U.S.C. § 112, Second Paragraph

The Examiner rejected Claims 7, 8, 11, 16, 19, 22, 27, 28, 30 and 33 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter, which applicants regard as the invention due to the use of the term “Java”. This rejection is respectfully traversed.

With respect to Claims 7, 8, 16, 19, 27 and 30, Applicants have amended such claims to delete the objectionable term of “Java”. The Java term was not found in rejected Claim 28, and therefore Claim 28 has not been amended. It is believed the Examiner meant to instead identify Claim 29 in this rejection, and Applicants have amended Claim 29 to delete the objectionable term of “Java”.

With respect to Claims 11, 22 and 33, Applicants have cancelled such claims herewith without prejudice or disclaimer.

Therefore, the rejection of Claims 7, 8, 11, 16, 19, 22, 27, 28, 30 and 33 under 35 U.S.C. § 112, second paragraph has been overcome.

² MPEP 2106(IV)(B)(1)(a): A claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory. A claimed computer readable medium encoded with a computer program is a computer element which defines structural and functional inter-relationships between the computer program and the rest of the computer which permits the computer program's functionality to be realized, and is thus statutory. See *Lowry*, 32 F.3d at 1583-84, 32 USPQ2d at 1035.

V. **35 U.S.C. § 103, Obviousness**

The Examiner rejected Claims 1-35 under 35 U.S.C. § 103 as being unpatentable over US Patent Application Publication 20020188935A1 to Hertling et al., in view of “Docjar – Source code: org/jboss/mx/loading/ClassLoaderUtils.java” (hereinafter Docjar). This rejection is respectfully traversed.

Applicants urge that the cited Docjar reference is not a valid 35 USC 103 reference for the present application, as the date of such reference does not predate the filing date of the present application. The present application has a filing date of August 1, 2003. The date of the reference, as indicated on the Examiner-supplied PTO-892 Notice of References Cited, is 6/17/2006 (which does not predate the filing date of the present application). In addition, a review of the website where this document exists (www.docjar.com) includes a Copyright Notice to Jax Systems LLC of New Jersey with a copyright date³ of 2005 (which does not predate the filing date of the present application). In addition, a review of domain name registrations performed at <http://domain-history.domaintools.com> (see Attachment A hereto) indicates that this website/domain name was not even registered until September 15, 2005 (which does not predate the filing date of the present application). In addition, a search of the New Jersey State Business records (see Attachment B hereto) for Jax Systems LLC⁴ indicates that this company did not even incorporate as an LLC until January 19, 2004 (which does not predate the filing date of the present application).

Thus, from all the information provided by the Examiner which pertains to this Docjar reference and, in addition, to information found by Applicants’ attorney after a non-exhaustive search for information pertaining to this website, there is no credible evidence that shows that the Docjar document was publicly available prior to the filing date of the present application. Therefore, this Docjar document is not a valid 35 USC 103 reference for the present application, as the date of such reference does not predate the filing date of the present application.

Therefore, a proper prima facie showing of obviousness has not been established by the Examiner, and accordingly the burden has not shifted to Applicants to rebut the obviousness assertion⁵.

³ The copyright date typically indicating the date the material was first published

⁴ This company name is listed as the owner of the copyright for all materials on the www.docjar.com web site, which contains the materials cited by the Examiner in rejecting all claims.

⁵ In rejecting claims under 35 U.S.C. Section 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). Only if that burden is met, does the burden of coming forward with evidence or argument shift to the applicant. *Id.* To establish prima facie obviousness of a claimed invention, all of the claim limitations must be taught or suggested by the prior art. MPEP 2143.03. *See also, In re Royka*, 490 F.2d 580 (C.C.P.A. 1974).

In addition, as a proper *prima facie* case of obviousness has not been established by the Examiner, Claims 1-35 have been erroneously rejected⁶.

In addition, the cited Hertling reference does not teach (or otherwise suggest) the claimed feature of ascertaining a *package name* for the class file using the set of sequential segments, wherein the *package name* is ascertained without disassembling the class file. Rather, the Hertling reference describes locating a class file. It does not describe determining or ascertaining a *package name* for a class file. A package name is different from the name of the class file itself (Specification page 2, lines 10-20; page 3, lines 5-13; page 4, lines 5-24; Hertlig paragraph [0005]). Nor would a person of ordinary skill in the art have been motivated to modify the teachings of Hertlig in accordance with the features of Claim 1, as a repository location for the class files is predefined/specified in a system path variable, for use by the class loader (class path), as described by Hertlig paragraph 0017. Claim 1 has been amended to further clarify this distinction.

Further with respect to Claims 5 and 9 (and similarly for Claims 16, 20, 27, 31 and 35), because Hertlig teaches that the address of the repository for where class files are located is pre-specified in such system path variable, there would be no reason to create proposed packaged names by parsing and prepending steps, with resubmission of another proposed name in response to an incorrect proposed package name being submitted, as recited in such claims.

Thus, it is further urged that Claims 1-35 are not obvious in view of the cited references.

Therefore, the rejection of Claims 1-35 under 35 U.S.C. § 103 has been overcome.

⁶ If the examiner fails to establish a *prima facie* case, the rejection is improper and will be overturned. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In the absence of a proper *prima facie* case of obviousness, an applicant who complies with the other statutory requirements is entitled to a patent. *See In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

VI. Conclusion

It is respectfully urged that the subject application is patentable over the cited references and is now in condition for allowance. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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Respectfully submitted,

/Wayne P. Bailey/

Wayne P. Bailey
Reg. No. 34,289
Yee & Associates, P.C.
P.O. Box 802333
Dallas, TX 75380
(972) 385-8777
Attorney for Applicants